

pending comparative renewal cases. Resolution of these cases will be done on a case-by-case basis, with the most important factor being the renewal applicant's performance during the license term and its eligibility for a renewal expectancy. This will affect broadcast station licensees that filed their applications for renewal of license on or before May 1, 1995, and any pending initial license applications that are mutually exclusive with such renewal applications. We estimate that there are approximately 9 initial license applications that are mutually exclusive with 8 pending renewal applications. This includes approximately 15 television applicants and 2 radio applicants.

IV. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements:

The *First Report and Order* adopts a number of rules that include reporting, recordkeeping, and compliance requirements. These requirements will apply to all applicants subject to the new competitive bidding procedures, as more fully detailed in the *First Report and Order* (referred to in this section more generally as "applicants"). We find that these requirements are the minimum needed to ensure the integrity and efficiency of broadcast licensing and to serve the public interest, as reflected in this record.

Applicants will be required to submit a short-form application (FCC Form 175) prior to any auction. Only winning bidders will need to file complete long-forms (FCC Form 301 for AM, FM and television stations, FCC Form 346 for LPTV and television translators, or FCC Form 349 for FM translators). Specifically, in response to a public notice announcing a window for the filing of broadcast and/or secondary broadcast applications for new stations and for major changes in existing facilities, applicants will be required to file a short-form application, along with any engineering data necessary to determine mutual exclusivity in a particular service.

With regard to the FM service, applicants will have the opportunity to submit a set of preferred site coordinates as a supplement to the FCC Form 175. FM applicants are not required to submit a set of preferred site coordinates, and may simply indicate the vacant allotment in the FM Table of Allotments upon which they intend to bid. No engineering data will be required to be submitted with FM service short-form applications.

Applicants for AM stations, LPTV stations, and television and FM translators will be required to file short-form applications specifying a channel or frequency upon which the applicant may operate in accordance with the Commission's existing interference standards for these services, which we are not altering in any way. To determine which AM, LPTV, and television and FM translator applications are mutually exclusive for auction purposes, we will require applicants for these services to file, in addition to their short-form applications, the engineering data contained in the pertinent FCC form (*i.e.*, FCC Form 301, FCC Form 346 or FCC Form 349). Similarly, in those rare instances in which analog television licensees file major modification applications (such as a change in the community of license), we will require that such applicants file both an FCC Form 175 and the engineering data contained in the FCC Form 301.

Applicants for broadcast auctions will be required to follow the general auction rules, 47 C.F.R. § 1.2105, with regard to completion of the short form and exhibits to be submitted with the short form.

Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the competitive bidding process.³⁴ Applicants also will be

³⁴ See 47 C.F.R. §§ 1.2105(a)(2)(viii); 1.2105(c)(1).

required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid.³⁵ After short-form applications are filed and prior to the time that the winning bidder has made its required down payment, all bidders will be prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other bidders that have applied to bid in the same geographic license area, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application.³⁶

Consistent with the Commission's general Part 1 auction rules,³⁷ all applicants for broadcast auctions must file their FCC Form 175 applications electronically beginning January 1, 1999. Applicants for the AM, LPTV, and television and FM translator services, who, as noted above, must submit engineering information with their short forms, will be required to file the engineering section of the electronic versions of the FCC Forms 301, 346 and 349, which are currently being developed.

A winning bidder that meets its down payment obligations in a timely manner will be required to file an appropriate long-form application for each construction permit for which it was the high bidder. Applicants will be required to submit any applicable exhibits required by the general Part 1 auction rules,³⁸ and should be filed pursuant to the rules governing the relevant broadcast service and according to any procedures set out by public notice.

Applicants may be subject to upfront payments, minimum opening bids and/or reserve prices in order to participate in broadcast service auctions. The Mass Media Bureau in conjunction with the Wireless Telecommunications Bureau shall seek public comment on and, as appropriate, shall establish these mechanisms for each auction, or group of auctions, in the broadcast services.

Following the close of bidding in an auction, the Commission will issue a public notice announcing the close of the auction and identifying the winning bidders. Winning bidders will be required to submit a down payment.³⁹ Specifically, within 10 business days of the public notice announcing the close of the auction, winning bidders will be required to supplement their upfront payments with a down payment amount sufficient to bring their total deposits with the Commission up to 20% of their winning bids. If the upfront payment already tendered by a winning bidder, after deducting any bid withdrawal payments due, amounts to 20% or more of its winning bid(s), no additional deposit will be required. To the extent that any upfront payment not only covers, but exceeds, the required down payment, the Commission will refund any excess amount after determining that no bid withdrawal payments are owed by the bidder. The down payment will be held by the Commission until the winning bidder has been

³⁵ See 47 C.F.R. § 1.2105(a)(2)(ix).

³⁶ See 47 C.F.R. § 1.2105(c).

³⁷ See 47 C.F.R. § 1.2105(a).

³⁸ See 47 C.F.R. §§ 1.2107(d) (concerning bidding consortia or joint bidding arrangements); 1.2110(i) (concerning designated entity status); and 1.2112(a) & (b) (concerning disclosure of ownership and real party in interest information, and disclosure of gross revenue information for applicants claiming any small business special measure).

³⁹ See 47 C.F.R. § 1.2107(a) & (b).

issued its construction permit and has paid the remaining balance of its winning bid, or until the winning bidder is found unqualified to be a permittee or has defaulted, in which case it will be returned, less any applicable default payments.

Auctions winners will be required to pay the balance of their winning bids in a lump sum within 10 business days following the release of a public notice announcing that their construction permits are ready to be granted. If a winning bidder fails to pay the balance of its winning bid in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within 10 business days after the payment deadline, provided that it also pays a late fee equal to 5% of the amount due.⁴⁰

Broadcast auction participants will be subject to the bid withdrawal, default and disqualification payments set forth in the general Part 1 auction rules, in instances where high bids are withdrawn during the course of the auction, where winning bids are withdrawn after an auction has closed, and where winning bidders fail to submit their long-form application, pay their winning bids or are disqualified.⁴¹

A licensee, or holder of a construction permit, who utilized a new entrant bidding credit will be required to reimburse the government for the amount of the bidding credit, plus interest, as a condition for Commission approval of the assignment or transfer of the license or permit to an entity that would not have qualified for the new entrant credit. As provided in the Commission's Part 1 rules, the amount of the repayment will be reduced over a five-year period.⁴² A licensee who received a new entrant bidding credit, however, will not be required to repay such bidding credit if it obtains within the five-year reimbursement period additional media interests so that it no longer meets the eligibility requirements for the new entrant credit it previously received.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:

Due to the insufficiency of the record in this proceeding, the *First Report and Order* does not make a final determination regarding the adoption of bidding credits or other special measures to enhance participation by various designated entities, including small businesses, in broadcast service and ITFS auctions. The *First Report and Order* does adopt a tiered new entrant bidding credit for entities with controlling interests in either no, or less than four, other media entities so as to enhance participation by small businesses and other designated entities, including small businesses owned by women and minority group members. Following the completion of certain pending evidentiary studies, the Commission may, in a further report and order in this proceeding, adopt additional or alternative bidding credits or other measures that more directly alleviate any adverse impact on small businesses (including those owned by women or by minority group members) of the requirement to participate in an auction to obtain a construction permit to provide commercial broadcast service. If additional or alternative designated entity measures are ultimately adopted, then any such measures will be applicable to the auction of any broadcast and ITFS applications then on file with the Commission.

Moreover, even if further special measures are not ultimately adopted, we believe that some of

⁴⁰ See 47 C.F.R. § 1.2109(a).

⁴¹ See 47 C.F.R. §§ 1.2104(g) & 1.2109.

⁴² See 47 C.F.R. § 1.2111(d)(2).

the competitive bidding procedures adopted in this *First Report and Order* reduce the time and cost of securing commercial broadcast and ITFS licenses to the ultimate benefit of small businesses.

Entities interested in bidding for broadcast station permits will not be required to submit a long form application prior to auction. We will require only that a short form application be submitted prior to auction, although AM, LPTV, and television and FM translator applicants will be required to submit the engineering data necessary to make determinations of mutual exclusivity. Requiring only minimal information in a short form application rather than a more detailed long form application will reduce the burden on small entities interested in participating in an auction. These entities (particularly FM applicants who are not required to submit any engineering data with their short-forms) will not be required to expend additional sums to prepare a complete long form application prior to auction. Limiting pre-auction costs will encourage and facilitate the participation of small entities in the auction and eliminate a potential barrier to entry for these parties.

The procedures adopted here further expedite service to the public, thereby reducing the cost to small entities of participating in these auctions, by limiting our pre-auction processing to what is necessary to determine mutual exclusivity. Similarly, in the case of pending applications, we will defer until after the auction all issues as to a bidder's basic qualifications or the acceptability of its application, whether raised in a petition to deny or a motion to enlarge issues, and we will decide such issues only with respect to the auction winner.

Also, as permitted by Section 3008, we have reduced the time for filing petitions to deny to 10 days after the long form applications submitted by winning bidders are accepted for filing. Some commenters objected to the establishment of a petition to deny period as brief as that allowed under Section 3008 (*i.e.*, five days), contending, *inter alia*, that such a short period is insufficient to evaluate the technical proposals and legal information contained in broadcast long-form applications.⁴³ While recognizing that the Commission relies on petitioners as private attorneys general to assist in overseeing the conduct of applicants and licensees and in the fulfillment of its statutory functions, we also consider expedition of service to the public to be of paramount significance. Accordingly, after careful consideration and in light of Congress' directive in the Budget Act, we found that a shortened petition to deny period of 10 days is appropriate for applications for broadcast and secondary broadcast construction permits obtained through the competitive bidding process.

We have eliminated the requirement that applicants affirmatively certify their financial qualifications and the availability of their proposed tower locations in their applications. This will provide small entities with additional flexibility to focus their limited financial resources on participation in the auction rather than preparing financial and other documentation and securing a tower location. We believe that the competitive bidding process itself serves to lessen the incentive for insincere application filings and provides a strong stimulus for timely station construction, so as to recapture bidding investments. In addition, we think it unlikely that bidders, who must construct their facilities to recoup the expenditures made in obtaining their construction permits via auction, will have the incentive to participate in and prevail at auction if they lack the financial wherewithal to construct their facilities.

We recognize that, despite the efficiency of auctions and the resulting reduction in the costs associated with filing an application, having to participate in an auction may limit the opportunities available to small businesses, particularly regarding future applications filed in anticipation of the winner

⁴³ See Comments of KERM, Inc. at 5; Tri-County Broadcasting, Inc. at 5; Communications Technologies, Inc. at 2; Michael Ferrigno at 10; Hatfield & Dawson Consulting Engineers at 3.

being selected through a system of competitive bidding. However, except for certain commercial broadcast applications filed before July 1, 1997, Section 309(j)(1), as amended by the Budget Act of 1997, requires that the Commission use competitive bidding procedures to award virtually all construction permits for commercial broadcast stations where mutually exclusive applications are filed. After carefully considering the comments, we determined that auctions are statutorily required to resolve mutually exclusive secondary broadcast service applications, as nothing in the statute or in the legislative history reflects an intention to limit Section 309(j)(1) to full power radio and television applications. We advised applicants to be aware that the requirement that competing applications be auctioned did not change the secondary nature of the LPTV and television and FM translator services.

Relying on the fact that the exemption from competitive bidding set forth in Section 309(j)(2) is expressly limited to noncommercial educational and public *broadcast* stations, we also determined that the exemption does not apply to ITFS, which is a non-broadcast service. Thus, although we agreed with commenters that ITFS is similar to noncommercial educational broadcast service and that Section 309(j) may not reflect on its face Congress's intent regarding the treatment of competing ITFS applications, we found that auctions are statutorily required to resolve all pending and future mutually exclusive ITFS applications. However, we will request that Congress amend Section 309(j) so that the statute clearly reflects its intent with regard to ITFS. Absent a clear statement from Congress that it means to exempt ITFS from competitive bidding, we will proceed to auction mutually exclusive ITFS applications. We will not commence ITFS auctions immediately, however, in order to allow sufficient time for us to obtain Congressional guidance.

Auctions are not statutorily required to resolve modification applications, since Section 309(j)(1) expressly refers to "mutually exclusive applications for . . . any initial license or construction permit."

Nevertheless, we determined to use competitive bidding to resolve mutually exclusive major modification applications but not mutually exclusive minor modification applications. Although some commenters opposed the auctioning of modification applications,⁴⁴ commenters did not suggest another method of resolving mutually exclusive major modification applications that is as efficient as competitive bidding. We will, however, allow applicants who have filed competing major modification applications, or competing major modification and new applications, to resolve their mutual exclusivity by means of engineering solutions or settlement before proceeding to auction. Given the infrequency with which minor modification applications are mutually exclusive and the less significant changes proposed in minor modification applications, we saw less utility to be gained from subjecting minor change applications to competitive bidding procedures. Thus, in accord with the comments, the parties will be expected to work together to resolve any mutual exclusivities between minor modification applications.

Section 309(l) governs the resolution of approximately 130 pending comparative licensing proceedings involving pre-July 1, 1997, applications for new commercial radio or television stations that did not settle within the 180-day waiver period prescribed by Congress. For settlements executed within that period, we waived our settlement rules, including the prohibition against "white knight" settlement agreements where a full-market settlement was involved. Such a waiver would allow a non-party to receive the license after paying the pending applicants to settle. We concluded that this "white knight" waiver could not be extended to partial settlements, as some commenters urged,⁴⁵ because doing so would

⁴⁴ See, e.g., Comments of Cox Radio, Inc. at 2-3; Kayo Broadcasting at 1-4; KM Broadcasting, Inc.; Six Video Broadcast Licensees at 6; Reply Comments of WB Television Network at 12.

⁴⁵ See Reply Comments of Paxson Communications Corp. at 10; Comments of Marri Broadcasting, L.P. at 2-4; Dewey Matthew Runnels at 2-4.

contravene Section 309(l)(2), which explicitly restricts our discretion regarding persons qualified to participate in a competitive bidding proceeding that involves pre-July 1, 1997 applications.

We also concluded that, contrary to certain comments,⁴⁶ it would not serve the public interest to waive our settlement rules on our own motion to facilitate settlements among applicants ineligible to take advantage of the statutory 180-day settlement period where applicants could settle for more than their legitimate and prudent expenses, or expand the 180-day period for applicants who were eligible to take advantage of the statutorily-mandated waiver period but did not do so. We noted that Congress had made no change to Section 311(c) that would require a substantial relaxation of our settlement rules, and pending competing applicants may settle at any time under our existing policies that limit payments. Moreover, there was no reason to believe that an additional waiver period would produce settlements in a significant number of the remaining cases.

Based upon the express language of Section 309(l), we concluded that in cases that did not settle, we have discretion to resolve applications subject to that provision by either auction or comparative hearings. Some commenters favored the use of comparative hearings for these pending pre-July 1, 1997 cases and expressed concern that the switch to auctions will detrimentally affect the quality of broadcast service. They focused particularly on the impact that auctions will allegedly have in terms of securing service that is narrowly tailored to the needs of the small, local community.⁴⁷ We found that Congress itself has made the judgment that auctions are generally preferable to comparative hearings by requiring them for competing commercial broadcast applications filed on or after July 1, 1997. We concluded that, by providing us with the discretion to determine whether or not to use auctions in pending pre-July 1st cases, Congress intended us to focus on any special circumstances in these cases that would tip the policy balance in favor of comparative hearings, not to re-visit the general congressional determination that broadcast auctions serve the public interest.

In exercising this discretion, we concluded that, even for the few pre-July 1, 1997 cases that had already progressed through an Initial Decision by an Administrative Law Judge, auctions will generally be fairer and more expeditious than deciding these pending cases through the comparative hearing process, particularly since the court's invalidation of the key comparative criterion prevents us from deciding any of these cases according to the applicants' reasonable expectation when they filed their applications. Under these circumstances, we disagreed that it would be arbitrary and capricious to ignore the results of the prior hearing. We found that for the Commission's Administrative Law Judges to adjudicate and decide the approximately 130 pending proceedings would take many years while auctions can be carried out much more quickly.

We rejected arguments raised by commenters that changing the selection process for pending applications filed before July 1, 1997 is impermissibly retroactive or otherwise unlawful.⁴⁸ We found that none of the pre-July 1, 1997 applicants subject to the new Section 309(l) have a vested right to a comparative hearing that is abridged by our decision to resolve such applications by a system of competitive bidding. And, in any event, the economic impact of this regulatory change is ameliorated

⁴⁶ See, e.g., Reply Comments of WB Television Network at 10; Comments of Grace Communications LC at 7.

⁴⁷ See, e.g., Comments of Wolfgang V. Kurtz at 1-2; Cromwell Group, Inc. at 1-2.

⁴⁸ See, e.g., Comments of Susan M. Bechtel at 6-8; Lindsay Television, Inc. at 8-10; Throckmorton Broadcasting, Inc. at 3-4.

somewhat by the statutory requirement that auctions to decide these pending cases be closed to other participants.

Based upon the express language of Section 309(l)(2), we found that, where post-June 30, 1997, applications are mutually exclusive with two or more pre-July 1, 1997 applications, we must dismiss them and conduct a competitive bidding procedure that is restricted to the pre-July 1, 1997 applications. We rejected arguments by some commenters that the distinction between pre-July 1st and post June 30th applications is arbitrary.⁴⁹ We found that Congress adopted a bright line distinction and that this distinction operates to exclude some applicants but to include others does not make it unlawful. Moreover, the practical effect of this bright line distinction will be limited, as we believe that settlement agreements have been filed in connection with the small number of cases involving post-June 30th applications mutually exclusive with two or more pre-July 1st applications.

Except for applications subject to Section 309(l), there is no statutory bar to reopening new filing periods for applications that would be mutually exclusive with pending applications. We agreed with commenters that reopening already closed filing periods would not serve the public interest since it would delay, rather than expedite, the resolution of the pending applications, and would defeat the reasonable expectations of applicants who timely filed long-form applications. As in the case of pending applications subject to Section 309(l)(2), restricting the qualified bidders to the pending applicants ameliorates the economic impact on small businesses of having to participate in an auction.

As a matter of fairness to pending applicants, we determined to refund all hearing and certain filing fees paid by all pending applicants. But we declined the suggestion of various commenters that we also reimburse the legitimate and prudent expenses of pending pre-July 1st applicants subject to the comparative freeze, who either do not participate in the auction or are outbid in the auction.⁵⁰ We are aware of no legal authority to make such additional reimbursement and concluded we have no obligation to do so.

We concluded that, consistent with our approach in most of the Commission's previous auctions, broadcast and ITFS applicants should be required to submit upfront payments with their short-form applications prior to auction. We also reserved the right to adopt minimum opening bid and/or reserve prices for each license. Establishing upfront payments, minimum opening bid and/or reserve prices may have a significant economic impact on small businesses interested in applying for commercial broadcast and ITFS licenses. However, upfront payments have been required in our general Part 1 auction rules since they were first promulgated, and Congress has directed us to prescribe minimum opening bids or reserve prices unless we specifically determine that this will not serve the public interest. While we were unpersuaded by generalized assertions that reserve prices or minimum opening bids would contravene the public interest, we directed the staff to seek comment on, and as appropriate, establish upfront payments, opening bids and/or reserve prices for each auction or group auctions, and to consider the issues raised by commenters in this proceeding in formulating proposals regarding upfront payments and minimum opening bids or reserve prices.

⁴⁹ See, e.g., Comments of George S. Flinn at 3-4; Robert B. Mahaffey at 4-7. But see Comments of Pappas Telecasting of America at 2-3.

⁵⁰ See, e.g., Comments of United Broadcasters Company at 10; Rio Grande Broadcasting Company at 8-9; Marri Broadcasting, LP at 4-5; Dewey Matthew Runnels at 4-5; Howard G. Bill at 4-5; Heidelberg-Stone Broadcasting Co. at 8-9; Grass Roots Radio, Inc. at 2-3; Willsyr Communications, LP at 32-33; Roy F. Perkins at 1-2; Liberty Productions, LP at 3-4; Columbia FM Limited Partnership at 7.

We adopted our proposal to apply the anti-collusion rule to broadcast service auctions. A number of commenters opposed this, believing instead that auction applicants should be permitted to conclude settlement agreements following the short-form filing deadline with those applicants with whom they are mutually exclusive.⁵¹ We noted that we adopted the anti-collusion rule to both prevent and to facilitate the detection of collusive conduct, thereby enhancing the competitiveness of the auction process and the post-auction market structure. We found that the rule has proven effective in the numerous spectrum auctions conducted to date, and concluded to apply the rule to broadcast auctions. A limited exception to the anti-collusion rule will, however, allow applicants who have filed either competing major modification applications, or competing major modification and new applications, to resolve their mutual exclusivity by means of engineering solutions or settlements during a limited period after the filing of short-form applications.

For the pending comparative renewal proceedings (which may not be resolved by auction), we determined that the most equitable and expeditious approach would be simply to permit the renewal applicants and their challengers, within the confines of the generally phrased standard comparative issues, to present whatever factors and evidence they believe most appropriate. We found that none of the commenters provided any persuasive arguments against such an approach to comparative hearings if we rejected our alternative two-step procedure.⁵² We acknowledged that comparative renewal hearings tend to be time-consuming and expensive for both the Commission and the private parties, and to disserve the public interest by prolonging the period during which a renewal applicant operates under a cloud. However, we stated that we remain willing, where the circumstances afford assurance that the competing applications were not filed for speculative or other improper purpose, to waive the limitations on payments to dismissing applicants in comparative renewal proceedings.

VI. Report to Congress:

The Commission will send a copy of the *First Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the *First Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *First Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register. See 5 U.S.C. § 604(b).

⁵¹ See, e.g., Comments of KM Communications, Inc. at 8; Positive Alternative Radio, Inc., *et al.* at 10; Throckmorton Broadcasting, Inc. at 11; Independent Broadcast Consultants, Inc. at 9; National Translator Association at 8.

⁵² One commenter did urge that in cases in which the renewal applicant is not awarded a renewal expectancy the Commission should rely on diversification. See Comments of Lawrence Brandt at 2-3. Another commenter recommended that the Commission resolve these cases on a case-by-case basis, considering all comparative criteria except for integration, and according comparative credit for the incumbent's past record based on the strength of the station's performance during the license period. See Reply Comments of Simon T. at 16-19.

APPENDIX C

1. Part 1 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Subpart A - General Rules of Practice and Procedure

Section 1.65 is amended to read as follows:

§ 1.65 Substantial and significant changes in the information furnished by applicants to the Commission.

(a) Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application. Whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of his application so as to furnish such additional or corrected information as may be appropriate. Whenever there has been a substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, submit a statement furnishing such additional or corrected information as may be appropriate, which shall be served upon parties of record in accordance with § 1.47. Where the matter is before any court for review, statements and requests to amend shall in addition be served upon the Commission's General Counsel. For the purposes of this section, an application is "pending" before the Commission from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court.

(b) Applications in ITFS and broadcast services subject to competitive bidding will be subject to the provisions of §§ 73.5002, 73.3522 and 1.2105(b) regarding the modification of their applications.

* * * * *

Subpart L - Random Selection Procedures for Mass Media Services

Section 1.1601 is amended to read as follows:

§ 1.1601 Scope.

The provisions of this subpart, and the provisions referenced herein, shall apply to applications for initial licenses or construction permits or for major changes in the facilities of authorized stations in the following services:

- (a) [Reserved]
- (b) [Reserved]

§ 1.1604 Post-selection hearings.

(a) Following the random selection, the Commission shall announce the "tentative selectee" and, where permitted by § 73.3584 invite Petitions to Deny its application.

(1) [Removed]

* * * * *

II. **Part 73 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:**

Section 73.1010 is amended to read as follows:

§ 73.1010 Cross reference to rules in other parts.

Certain rules applicable to broadcast services, some of which are also applicable to other services, are set forth in the following Parts of the FCC Rules and Regulations.

(a) Part 1, "Practice and Procedure."

(8) Subpart Q, "Competitive Bidding Proceedings" (§§ 1.2101-1.2112).

Section 73.3500 is amended to read as follows:

§ 73.3500 Application and report forms.

Following are the FCC broadcast application and report forms, listed by number.

Form number	Title
175	Application to Participate in an FCC Auction

Section 73.3522 is amended to read as follows:

§ 73.3522 Amendment of applications.

(a) Broadcast services subject to competitive bidding.

(1) Applicants in all broadcast services subject to competitive bidding will be subject to the provisions of §§ 73.5002 and 1.2105(b) regarding the modification of their short-form applications.

(2) Subject to the provision of § 73.5005, if it is determined that a long form application submitted by a winning bidder or a non-mutually exclusive applicant for a new station or a major change in an existing station in all broadcast services subject to competitive bidding is substantially complete, but contains any defect, omission, or inconsistency, a deficiency letter will be issued affording the applicant an opportunity to correct the defect, omission or inconsistency. Amendments may be filed pursuant to the deficiency letter curing any defect, omission or inconsistency identified by the Commission, or to make minor modifications to the application, or pursuant to § 1.65. Such amendments should be filed in accordance with § 73.3513. If a petition to deny has been filed, the amendment shall be served on the petitioner.

(3) Subject to the provisions of §§ 73.3571, 73.3572 and 73.3573, deficiencies, omissions or inconsistencies in long-form applications may not be cured by major amendment. The filing of major amendments to long-form applications is not permitted. An application will be considered to be newly filed if it is amended by a major amendment.

(4) Paragraph (a) of this section is not applicable to applications for minor modifications of facilities in the non-reserved FM broadcast service, nor to any application for a reserved band FM station.

(b) Reserved band FM and reserved noncommercial educational television stations.

(1) Predesignation amendments. Subject to the provisions of §§ 73.3525, 73.3572, 73.3573 and 73.3580, mutually exclusive broadcast applications for reserved band FM stations and television stations on a reserved channel may be amended as a matter of right by the date specified (not less than 30 days after issuance) in the FCC's Public Notice announcing the acceptance for filing of the last-filed mutually exclusive application. Subsequent amendments prior to designation of the proceeding for hearing will be considered only upon a showing of good cause for late filing or pursuant to § 1.65 or § 73.3514. Unauthorized or untimely amendments are subject to return by the FCC's staff without consideration.

(2) Postdesignation amendments. (i) Except as provided in paragraph (ii) of this section, requests to amend an application after it has been designated for hearing will be considered only upon written petition properly served upon the parties of record in accordance with § 1.47 and, where applicable, compliance with the provisions of § 73.3525, and will be considered only upon a showing of good cause for late filing. In the case of requests to amend the engineering proposal (other than to make changes with respect to the type of equipment specified), good cause will be considered to have been shown only if, in addition to the usual good cause consideration, it is demonstrated:

(A) That the amendment is necessitated by events which the applicant could not reasonably have foreseen (e.g., notification of a new foreign station or loss of transmitter site by condemnation); and

(B) That the amendment does not require an enlargement of issues or the addition of new parties to the proceeding.

(ii) In comparative broadcast cases (including comparative renewal proceedings), amendments relating to issues first raised in the designation order may be filed as a matter of right within 30 days after that Order or a summary thereof is published in the Federal Register, or by a date certain to be specified in the Order. (iii) Notwithstanding the provisions of paragraphs (b)(2)(i) -(ii) of this section, and subject to compliance with the provisions of § 73.3525, a petition for leave to amend may be granted, provided it is requested that the application as amended be removed from the hearing docket and returned to the processing line.

(c) Minor modifications of facilities in the non-reserved FM broadcast service.

(1) Subject to the provisions of §§ 73.3525, 73.3573, and 73.3580, for a period of 30 days following the FCC's issuance of a Public Notice announcing the tender of an application for minor modification of a non-reserved band FM station, (other than Class D stations), minor amendments may be filed as a matter of right.

(2) For applications received on or after August 7, 1992, an applicant whose application is found to meet minimum filing requirements, but nevertheless is not complete and acceptable, shall have the opportunity during the period specified in the FCC staff's deficiency letter to correct all deficiencies in the tenderability and acceptability of the underlying application, including any deficiency not specifically identified by the staff. [For minimum filing requirements see § 73.3564(a). Examples of tender defects appear at 50 FR 19936 at 19945-46 (May 13, 1985), reprinted as Appendix D, Report and Order, MM Docket No. 91- 347, 7 FCC Rcd 5074, 5083-88 (1992). For examples of acceptance defects, see 49 FR 47331.] Prior to the end of the period specified in the deficiency letter, a submission seeking to correct a tender and/or acceptance defect in an application meeting minimum filing requirements will be treated as an amendment for good cause if it would successfully and directly correct the defect. Other amendments submitted prior to grant will be considered only upon a showing of good cause for late filing or pursuant to § 1.65 or § 73.3514.

(3) Unauthorized or untimely amendments are subject to return by the Commission without consideration. However, an amendment to a non-reserved band application will not be accepted if the effect of such amendment is to alter the proposed facility's coverage area so as to produce a conflict with an applicant who files subsequent to the initial applicant but prior to the amendment application. Similarly, an applicant subject to "first come/first serve" processing will not be permitted to amend its application and retain filing priority if the result of such amendment is to alter the facility's coverage area so as to produce a conflict with an applicant which files subsequent to the initial applicant but prior to the amendment.

Note 1: When two or more broadcast applications are tendered for filing which are mutually exclusive with each other but not in conflict with any previously filed applications which have been accepted for filing, the FCC, where appropriate, will announce acceptance of the earliest tendered application and place the later filed application or applications on a subsequent public notice of acceptance for filing in order to establish a deadline for the filing of amendments as a matter of right for all applicants in the group.

Section 73.3525 is amended to read as follows:

§ 73.3525 Agreements for removing application conflicts.

(c) Except where a joint request is filed pursuant to paragraph (a) of this section, any applicant filing an amendment pursuant to §§ 73.3522(b)(1) and (c), or a request for dismissal pursuant to §§ 73.3568(b)(1) and (c), which would remove a conflict with another pending application; or a petition for leave to amend pursuant to § 73.3522(b)(2) which would permit a grant of the amended application or an application previously in conflict with the amended application; or a request for dismissal pursuant to § 73.3568(b)(2), shall file with it an affidavit as to whether or not consideration (including an agreement for merger of interests) has been promised to or received by such applicant, directly or indirectly, in connection with the amendment, petition or request.

(d) Upon the filing of a petition for leave to amend or to dismiss an application for broadcast facilities which has been designated for hearing or upon the dismissal of such application on the FCC's own motion pursuant to § 73.3568, each applicant or party remaining in hearing, as to whom a conflict would be removed by the amendment or dismissal shall submit for inclusion in the record of that proceeding an affidavit stating whether or not he has directly or indirectly paid or promised consideration (including an agreement for merger of interests) in connection with the removal of such conflict.

(l) The prohibition of collusion as set forth in §§ 1.2105(c) and 73.5002 of this section, which becomes effective upon the filing of short-form applications, shall apply to all broadcast services subject to competitive bidding.

Section 73.3564 is amended to read as follows:

§ 73.3564 Acceptance of applications.

(a) (1) Applications tendered for filing are dated upon receipt and then forwarded to the Mass Media Bureau, where an administrative examination is made to ascertain whether the applications are complete. Except for applications for minor modifications of facilities in the non-reserved FM band, as defined in § 73.3573 (a)(2), long form applications subject to the provisions of § 73.5005 found to be complete or substantially complete are accepted for filing and are given file numbers. In the case of minor defects as to completeness, a deficiency letter will be issued and the applicant will be required to supply the missing or corrective information. Applications that are not substantially complete will not be considered and will be returned to the applicant.

(2) In the case of minor modifications of facilities in the non-reserved FM band, applications will be placed on public notice if they meet the following two-tiered minimum filing requirement as initially filed in first come/first served proceedings:

(i) The application must include:

- (A) Applicant's name and address,
- (B) Applicant's original signature,
- (C) Principal community,
- (D) Channel or frequency,
- (E) Class of station, and
- (F) Transmitter site coordinates; and

(ii) The application must not omit more than 3 of the second tier items specified in appendix C, Report and Order, MM Docket No. 91-347, FCC 92-328, 7 FCC Rcd 5074 (1992). Applications found not to meet minimum filing requirements will be returned to the applicant. Applications found to meet minimum filing requirements, but that contain deficiencies in tender and/or acceptance information, shall be given an opportunity for corrective amendment pursuant to § 73.3522. Applications found to be substantially complete and in accordance with the Commission's core legal and technical requirements will be accepted for filing. Applications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for corrective amendment.

(b) Acceptance of an application for filing merely means that it has been the subject of a preliminary review by the FCC's administrative staff as to completeness. Such acceptance will not preclude the subsequent dismissal of the application if it is found to be patently not in accordance with the FCC's rules.

(c) At regular intervals, the FCC will issue a Public Notice listing all long form applications which have been accepted for filing. Pursuant to §§ 73.3571(h), 73.3572, and 73.3573(f), such notice shall establish a cut-off date for the filing of petitions to deny. With respect to reserved band FM applications, the Public Notice shall also establish a cut-off date for the filing of mutually exclusive applications pursuant to § 73.3573(e). However, no application will be accepted for filing unless certification of compliance with the local notice requirements of § 73.3580(h) has been made in the tendered application.

(d) The FCC will specify by Public Notice, pursuant to § 73.5002, a period for filing applications for new stations or for major modifications in the facilities of an existing station. Except for reserved band FM stations and TV stations on reserved noncommercial educational channels, applications for new and major modifications in facilities will be accepted only during these window filing periods specified by the

Commission.

(e) Applications for minor modification of facilities may be tendered at any time, unless restricted by the FCC. These applications will be processed on a "first come/first served" basis and will be treated as simultaneously tendered if filed on the same day. Any applications received after the filing of a lead application will be grouped according to filing date, and placed in a queue behind the lead applicant. The FCC will periodically release a Public Notice listing those minor modification of facilities applications accepted for filing.

(f) If a non-reserved band FM channel allotment becomes vacant, after the grant of a construction permit becomes final, because of a lapsed construction permit or for any other reason, the FCC will, by Public Notice, announce a subsequent filing window for the acceptance of new applications for such channels.

(g) Applications for operation in the 1605-1705 kHz band will be accepted only if filed pursuant to the terms of § 73.30(b).

Section 73.3568 is amended to read as follows:

§ 73.3568 Dismissal of applications.

(a) (1) Failure to prosecute an application, or failure to respond to official correspondence or request for additional information, will be cause for dismissal.

(2) Applicants in all broadcast services subject to competitive bidding will be subject to the provisions of §§ 73.5002 and 1.2105(b) regarding the dismissal of their short-form applications.

(3) Applicants in all broadcast services subject to competitive bidding will be subject to the provisions of §§ 73.5004, 73.5005 and 1.2104(g) regarding the dismissal of their long-form applications and the imposition of applicable withdrawal, default and disqualification payments.

(b) (1) Subject to the provisions of § 73.3525, dismissal of applications for channels reserved for noncommercial educational use will be without prejudice where an application has not yet been designated for hearing, but may be made with prejudice after designation for hearing.

(2) Subject to the provisions of § 73.3525, requests to dismiss an application for a channel reserved for noncommercial educational use, without prejudice, after it has been designated for hearing, will be considered only upon written petition properly served upon all parties of record. Such requests shall be granted only upon a showing that the request is based on circumstances wholly beyond the applicant's control which preclude further prosecution of his application.

(c) Subject to the provisions of §§ 73.3523 and 73.3525, any application for minor modification of facilities may, upon request of the applicant, be dismissed without prejudice as a matter of right.

(d) An applicant's request for the return of an application that has been accepted for filing will be regarded as a request for dismissal.

Section 73.3571 is amended to read as follows:

§ 73.3571 Processing of AM broadcast station applications.

(a) Applications for AM broadcast facilities are divided into three groups.

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for an AM station authorized under this part is any increase in power, except where accompanied by a complimentary reduction of antenna efficiency which leads to the same amount, or less, radiation in all directions (in the horizontal and vertical planes when skywave propagation is involved, and in the horizontal plane only for daytime considerations), relative to the presently authorized radiation levels, or any change in frequency, hours of operation, or community of license. A major change in ownership is a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed.

(2) The second group consists of applications for licenses and all other changes in the facilities of authorized stations.

(3) The third group consists of applications for operation in the 1605-1705 kHz band which are filed subsequent to FCC notification that allotments have been awarded to petitioners under the procedure specified in § 73.30.

(b) (1) The FCC may, after acceptance of an application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore is subject to the provisions of §§ 73.3522, 73.3580 and 1.1111 of this chapter pertaining to major changes. Such major modification applications will be dismissed as set forth in paragraph (h)(1)(i) of this section.

(2) An amendment to an application which would effect a major change, as defined in paragraph (a) (1) of this section, will not be accepted except as provided for in (h)(1)(i).

(c) An application for changes in the facilities of an existing station will continue to carry the same file number even though (pursuant to FCC approval) an assignment of license or transfer of control of said licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

(d) If, upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of an application, the same will be granted. If the FCC is unable to make such a finding and it appears that a hearing may be required, the procedure set forth in § 73.3593 will be followed.

(e) Applications proposing to increase the power of an AM station are subject to the following requirements:

(1) In order to be acceptable for filing, any application which does not involve a change in site must propose at least a 20% increase in the station's nominal power.

(2) Applications involving a change in site are not subject to the requirements in paragraph (e)(1) of this section.

(3) Applications for nighttime power increases for Class D stations are not subject to the requirements of this section and will be processed as minor changes.

(4) The following special procedures will be followed in authorizing Class II-D daytime-only stations on

940 and 1550 kHz, and Class III daytime-only stations on the 41 regional channels listed in § 73.26(a), to operate unlimited-time.

(i) Each eligible daytime-only station in the foregoing categories will receive an Order to Show Cause why its license should not be modified to specify operation during nighttime hours with the facilities it is licensed to start using at local sunrise, using the power stated in the Order to Show Cause, that the Commission finds is the highest nighttime level--not exceeding 0.5 kW--at which the station could operate without causing prohibited interference to other domestic or foreign stations, or to co-channel or adjacent channel stations for which pending applications were filed before December 1, 1987.

(ii) Stations accepting such modification shall be reclassified. Those authorized in such Show Cause Orders to operate during nighttime hours with a power of 0.25 kW or more, or with a power that, although less than 0.25 kW, is sufficient to enable them to attain RMS field strengths of 141 mV/m or more at 1 kilometer, shall be redesignated as Class II-B stations if they are assigned to 940 or 1550 kHz, and as unlimited-time Class III stations if they are assigned to regional channels.

(iii) Stations accepting such modification that are authorized to operate during nighttime hours at powers less than 0.25 kW, and that cannot with such powers attain RMS field strengths of 141 mV/m or more at 1 kilometer, shall be redesignated as Class II-S stations if they are assigned to 940 or 1550 kHz, and as Class III-S stations if they are assigned to regional channels.

(iv) Applications for new stations may be filed at any time on 940 and 1550 kHz and on the regional channels. Also, stations assigned to 940 or 1550 kHz, or to the regional channels, may at any time, regardless of their classifications, apply for power increases up to the maximum generally permitted. Such applications for new or changed facilities will be granted without taking into account interference caused to Class II-S or Class III-S stations, but will be required to show interference protection to other classes of stations, including stations that were previously classified as Class II-S or Class III-S, but were later reclassified as Class II-B or Class III unlimited-time stations as a result of subsequent facilities modifications that permitted power increases qualifying them to discontinue their "S" subclassification.

(f) Applications for minor modifications for AM broadcast stations, as defined in (a)(2) of this paragraph, may be filed at any time, unless restricted by the FCC, and, generally will be processed in the order in which they are tendered. The FCC will periodically release a Public Notice listing those applications accepted for filing. Any such applications found to be mutually exclusive must be resolved through settlement or technical amendment.

(g) Applications for change of license to change hours of operation of a Class C AM broadcast station, to decrease hours of operation of any other class of station, or to change station location involving no change in transmitter site will be considered without reference to the processing line.

(h) Processing new and major AM broadcast station applications.

(1)(i) The FCC will specify by Public Notice, pursuant to § 73.5002, a period for filing AM applications for a new station or for major modifications in the facilities of an authorized station. AM applications for new facilities or for major modifications will be accepted only during these specified periods. Applications submitted prior to the appropriate filing period or "window" opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely. (ii) Such AM applicants will be subject to the provisions of §§ 1.2105 and 73.5002 regarding the submission of the short-form application, FCC Form 175, and all appropriate certifications, information and exhibits contained therein. To determine which AM applications are mutually exclusive, AM applicants must submit the engineering data contained in FCC Form 301 as

a supplement to the short-form application. Such engineering data will not be studied for technical acceptability, but will be protected from subsequently filed applications as of the close of the window filing period. Determinations as to the acceptability or grantability of an applicant's proposal will not be made prior to an auction. (iii) AM applicants will be subject to the provisions of §§ 1.2105 and 73.5002 regarding the modification and dismissal of their short-form applications.

(2) Subsequently, the FCC will release Public Notices: (i) identifying the short-form applications received during the window filing period which are found to be mutually exclusive; (ii) establishing a date, time and place for an auction; (iii) providing information regarding the methodology of competitive bidding to be used in the upcoming auction, bid submission and payment procedures, upfront payment procedures, upfront payment deadlines, minimum opening bid requirements and applicable reserve prices in accordance with the provisions of § 73.5002; (iv) identifying applicants who have submitted timely upfront payments and, thus, are qualified to bid in the auction.

(3) If, during the window filing period, the FCC receives non-mutually exclusive AM applications, a Public Notice will be released identifying the non-mutually exclusive applicants, who will be required to submit the appropriate long form application within 30 days of the Public Notice and pursuant to the provisions of § 73.5005(d). These non-mutually exclusive applications will be processed and the FCC will periodically release a Public Notice listing such non-mutually exclusive applications determined to be acceptable for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the non-mutually exclusive long form application, the same will be granted.

(4) (i) The auction will be held pursuant to the procedures set forth in §§ 1.2101 et seq. and 73.5000 et seq. Subsequent to the auction, the FCC will release a Public Notice announcing the close of the auction and identifying the winning bidders. Winning bidders will be subject to the provisions of §§ 1.2107 and 73.5003 regarding down payments and will be required to submit the appropriate down payment within 10 business days of the Public Notice. Pursuant to §§ 1.2107 and 73.5005, a winning bidder that meets its down payment obligations in a timely manner must, within 30 days of the release of the Public Notice announcing the close of the auction, submit the appropriate long-form application for each construction permit for which it was the winning bidder. Long-form applications filed by winning bidders shall include the exhibits identified in § 73.5005(a).

(ii) These applications will be processed and the FCC will periodically release a Public Notice listing such applications that have been accepted for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the winning bidder's long form application, a Public Notice will be issued announcing that the construction permit is ready to be granted. Each winning bidder shall pay the balance of its winning bid in a lump sum within 10 business days after release of the Public Notice, as set forth in §§ 1.2109(a) and 73.5003. Construction permits will be granted by the Commission following the receipt of the full payment. (iii) All long-form applications will be cut-off as of the date of filing with the FCC and will be protected from subsequently filed long-form applications. Applications will be required to protect all previously filed commercial and noncommercial applications. Winning bidders filing long-form applications may change the technical proposals specified in their previously submitted short-form applications, but such change may not constitute a major change. If the submitted long-form application would constitute a major change from the proposal submitted in the short-form application, the long-form

application will be returned pursuant to paragraph (h)(1)(i) of this section.

(i) In order to grant a major or minor change application made contingent upon the grant of another licensee's request for a facility modification, the Commission will not consider mutually exclusive applications by other parties that would not protect the currently authorized facilities of the contingent applicants. Such major change applications remain, however, subject to the provisions of §§ 73.3580 and 1.1111. The Commission shall grant contingent requests for construction permits for station modifications only upon a finding that such action will promote the public interest, convenience and necessity.

Section 73.3572 is amended to read as follows:

§ 73.3572 Processing of TV broadcast, low power TV, TV translator and TV booster station applications.

(a) Applications for TV stations are divided into two groups:

(1) In the first group are applications for new stations or major changes in the facilities of authorized stations. A major change for TV broadcast stations authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (§ 73.606). Other requests for change in frequency or community of license for TV broadcast stations must first be submitted in the form of a petition for rulemaking to amend the Table of Allotments. In the case of low power TV, TV translator, and TV booster stations authorized under Part 74 of this chapter, a major change is any change in:

- (i) Frequency (output channel) assignment (does not apply to TV boosters);
- (ii) Transmitting antenna system including the direction of the radiation, directive antenna pattern or transmission line;
- (iii) Antenna height;
- (iv) Antenna location exceeding 200 meters; or
- (v) Authorized operating power.

(2) However, if the proposed modification of facilities, other than a change in frequency, will not increase the signal range of the low power TV, TV translator or TV booster station in any horizontal direction, the modification will not be considered a major change.

(i) Provided that in the case of an authorized low power TV, TV translator or TV booster which is predicted to cause or receive interference to or from an authorized TV broadcast station pursuant to § 74.705 or interference with broadcast or other services under § 74.703 or § 74.709, that an application for a change in output channel, together with technical modifications which are necessary to avoid interference (including a change in antenna location of less than 16.1 km), will not be considered as an application for a major change in those facilities.

(ii) Provided further, that a low power TV, TV translator or TV booster station: authorized on a channel from channel 60 to 69, or which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized DTV station pursuant to § 74.706, or which is located within the distances specified below in paragraph (iii) of this section to the coordinates of co-channel DTV authorizations (or allotment table coordinates if there are no authorized facilities at different coordinates), may at any time file a displacement relief application for a change in output channel, together with any technical modifications which are necessary to avoid interference or continue serving the station's protected service area. Such an application will not be considered as an application for a major change in those facilities. Where such an application is mutually exclusive with applications for new low power

TV, TV translator or TV booster stations, or with other nondisplacement relief applications for facilities modifications, priority will be afforded to the displacement application(s) to the exclusion of the other applications.

(iii)(A) The geographic separations to co-channel DTV facilities or allotment reference coordinates, as applicable, within which to qualify for displacement relief are the following:

- (1) Stations on UHF channels: 265 km (162 miles)
- (2) Stations on VHF channels 2-6: 280 km (171 miles)
- (3) Stations on VHF channels 7-13: 260 km (159 miles)

(B) Engineering showings of predicted interference may also be submitted to justify the need for displacement relief.

(iv) Provided further, that the FCC may, within 15 days after acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of §§ 73.3522, 73.3580, and 1.1111 of this chapter pertaining to major changes. Such major modification applications filed for low power TV, TV translator, TV booster stations, and for a non-reserved television allotment, are subject to competitive bidding procedures and will be dismissed if filed outside a specified filing period. See 47 C.F.R. § 73.5002(a).

(b) A new file number will be assigned to an application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraph (a)(1) of this section, or result in a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed and § 73.3580 will apply to such amended application. An application for change in the facilities of any existing station will continue to carry the same file number even though (pursuant to FCC approval) an assignment of license or transfer of control of such licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

(c) Amendments to low power TV, TV translator, TV booster stations, or non-reserved television applications, which would require a new file number pursuant to paragraph (b) of this section, are subject to competitive bidding procedures and will be dismissed if filed outside a specified filing period. See 47 C.F.R. § 73.5002(a). When an amendment to an application for a reserved television allotment would require a new file number pursuant to paragraph (b) of this section, the applicant will have the opportunity to withdraw the amendment at any time prior to designation for a hearing if applicable; and may be afforded, subject to the discretion of the Administrative Law Judge, an opportunity to withdraw the amendment after designation for a hearing.

(d) Applications for TV stations on reserved noncommercial educational channels will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after issuance) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and petitions to deny the listed applications must be filed.

(e) (1) The FCC will specify by Public Notice, pursuant to § 73.5002, a period for filing applications for a new non-reserved television, low power TV and TV translator stations or for major modifications in the facilities of such authorized station. (2) Such applicants shall be subject to the provisions of §§ 1.2105

and competitive bidding procedures. See 47 C.F.R. §§ 73.5000 et seq.

(f) Applications for minor modifications for television broadcast, low power television and TV translator stations, as defined in paragraph (a)(2) of this Section, may be filed at any time, unless restricted by the FCC, and, generally, will be processed in the order in which they are tendered.

(g) TV booster station applications may be filed at any time. Subsequent to filing, the FCC will release a Public Notice accepting for filing and proposing for grant those applications which are not mutually exclusive with any other TV translator, low power TV, or TV booster application, and providing for the filing of Petitions To Deny pursuant to § 73.3584.

Section 73.3573 is amended to read as follows:

§ 73.3573 Processing FM broadcast station applications.

(a) Applications for FM broadcast stations are divided into two groups:

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for an FM station authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (§ 73.202 (b)). A licensee or permittee may seek the higher or lower class adjacent channel, intermediate frequency or co-channel or the same class adjacent channel of its existing FM broadcast station authorization by filing a minor change application. Other requests for change in frequency or community of license for FM stations must first be submitted in the form of a petition for rulemaking to amend the Table of Allotments. Long-form applications submitted pursuant to § 73.5005 for a new FM broadcast service may propose a higher or lower class adjacent channel, intermediate frequency or co-channel. For noncommercial educational FM stations, a major change is any change in frequency or community of license or any change in power or antenna location or height above average terrain (or combination thereof) which would result in a change of 50% or more in the area within the station's predicted 1 mV/m field strength contour. (A change in area is defined as the sum of the area gained and the area lost as a percentage of the original area). A major change in ownership is a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed.

(2) The second group consists of applications for licenses and all other changes in the facilities of authorized stations.

Note. 1: Applications to modify the channel and/or class of an FM broadcast station to an adjacent channel, intermediate frequency (IF) channel, or co-channel shall not require any other amendments to the Table of Allotments. Such applications may resort to the provisions of the Commission's Rules permitting short spaced stations as set forth in § 73.215 as long as the applicant shows by separate exhibit attached to the application the existence of an allotment reference site which meets the allotment standards, the minimum spacing requirements of § 73.207 and the city grade coverage requirements of § 73.315. This exhibit must include a site map or, in the alternative, a statement that the transmitter will be located on an existing tower. Examples of unsuitable allotment reference sites include those which are offshore, in a national or state park in which tower construction is prohibited, on an airport, or otherwise in an area

which would necessarily present a hazard to air navigation.

(b) (1) The FCC may, after the acceptance of an application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of §§ 73.3522, 73.3580 and 1.1111 of this chapter pertaining to major changes. Such major modification applications in the non-reserved band will be dismissed as set forth in paragraph (f)(2)(i) of this section.

(2) An amendment to a non-reserved band application which would effect a major change, as defined in paragraph (a)(1) of this section, will not be accepted, except as provided for in (f)(2)(i).

(3) A new file number will be assigned to a reserved band application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraph (a)(1) of this section. Where an amendment to a reserved band application would require a new file number, the applicant will have the opportunity to withdraw the amendment at any time prior to designation for hearing, if applicable; and may be afforded, subject to the discretion of the Administrative Law Judge, an opportunity to withdraw the amendment after designation for hearing.

(c) An application for changes in the facilities of any existing station will continue to carry the same file number even though (pursuant to FCC approval) an assignment of license or transfer of control of such licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

(d) If, upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of an application for FM broadcast facilities, the same will be granted. If the FCC is unable to make such a finding and it appears that a hearing may be required, the procedure given in § 73.3593 will be followed.

(e) Applications for reserved band and Class D FM broadcast stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and/or petitions to deny the listed applications must be filed.

(f) Processing non-reserved FM broadcast station applications.

(1) Applications for minor modifications for non-reserved FM broadcast stations, as defined in (a)(2) of this paragraph, may be filed at any time, unless restricted by the FCC, and, generally, will be processed in the order in which they are tendered. The FCC will periodically release a Public Notice listing those applications accepted for filing. Processing of these applications will be on a "first come/first serve" basis with the first acceptable application cutting off the filing rights of subsequent applicants. All applications received on the same day will be treated as simultaneously tendered and, if they are found to be mutually exclusive, must be resolved through settlement or technical amendment. Applications received after the tender of a lead application will be grouped, according to filing date, behind the lead application in a queue. The priority rights of the lead applicant, as against all other applicants, are determined by the date of filing, but the filing date for subsequent applicants for that channel and community only reserves a

place in the queue. The rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves.

(2) (i) The FCC will specify by Public Notice, pursuant to § 73.5002(a), a period for filing non-reserved band FM applications for a new station or for major modifications in the facilities of an authorized station. FM applications for new facilities or for major modifications will be accepted only during the appropriate filing period or "window". Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely. (ii) Such FM applicants will be subject to the provisions of §§ 1.2105 and 73.5002 regarding the submission of the short-form application, FCC Form 175, and all appropriate certifications, information and exhibits contained therein. FM applicants may submit a set of preferred site coordinates as a supplement to the short-form application. Any specific site indicated by FM applicants will not be studied for technical acceptability, but will be protected from subsequently filed applications as a full-class facility as of the close of the window filing period. Determinations as to the acceptability or grantability of an applicant's proposal will not be made prior to an auction. (iii) FM applicants will be subject to the provisions of §§ 1.2105 and 73.5002(c) regarding the modification and dismissal of their short-form applications.

(3) Subsequently, the FCC will release Public Notices: (i) identifying the short-form applications received during the window filing period which are found to be mutually exclusive; (ii) establishing a date, time and place for an auction; (iii) providing information regarding the methodology of competitive bidding to be used in the upcoming auction, bid submission and payment procedures, upfront payment procedures, upfront payment deadlines, minimum opening bid requirements and applicable reserve prices in accordance with the provisions of § 73.5002; (iv) identifying applicants who have submitted timely upfront payments and, thus, are qualified to bid in the auction.

(4) If, after the close of the appropriate window filing period, a non-reserved FM allotment remains vacant, the window remains closed until the FCC, by Public Notice, specifies a subsequent period for filing non-reserved band FM applications for a new station or for major modifications in the facilities of an authorized station pursuant to paragraph (f)(2)(i) of this section. If, during the window filing period, the FCC receives only one application for any non-reserved FM allotment, a Public Notice will be released identifying the non-mutually exclusive applicant, who will be required to submit the appropriate long-form application within 30 days of the Public Notice and pursuant to the provisions of § 73.5005. These non-mutually exclusive applications will be processed and the FCC will periodically release a Public Notice listing such non-mutually exclusive applications determined to be acceptable for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584 of this chapter. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the non-mutually exclusive long-form application, it will be granted.

(5) (i) The auction will be held pursuant to the procedures set forth in §§ 1.2101 et seq. and 73.5000 et seq. Subsequent to the auction, the FCC will release a Public Notice announcing the close of the auction and identifying the winning bidders. Winning bidders will be subject to the provisions of §§ 1.2107 and 73.5003 regarding down payments and will be required to submit the appropriate down payment within 10 business days of the Public Notice. Pursuant to §§ 1.2107 and 73.5005, a winning bidder that meets

its down payment obligations in a timely manner must, within 30 days of the release of the public notice announcing the close of the auction, submit the appropriate long-form application for each construction permit for which it was the winning bidder. Long-form applications filed by winning bidders shall include the exhibits identified in § 73.5005(a).

(ii) These applications will be processed and the FCC will periodically release a Public Notice listing such applications that have been accepted for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584 of this chapter. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the winning bidder's long-form application, a Public Notice will be issued announcing that the construction permit is ready to be granted. Each winning bidder shall pay the balance of its winning bid in a lump sum within 10 business days after release of the Public Notice, as set forth in §§ 1.2109(a) and 73.5003(c). Construction permits will be granted by the Commission following the receipt of the full payment. (iii) All long-form applications will be cut-off as of the date of filing with the FCC and will be protected from subsequently filed long-form applications and rulemaking petitions. Applications will be required to protect all previously filed commercial and noncommercial applications. Winning bidders filing long-form applications may change the technical proposals specified in their previously submitted short-form applications, but such change may not constitute a major change. If the submitted long-form application would constitute a major change from the proposal submitted in the short-form application or the allotment, the long-form application will be returned pursuant to paragraph (f)(2)(i) of this section.

Note 2: Processing of applications for new low power educational FM applications:

Pending the Commission's restudy of the impact of the rule changes pertaining to the allocations of 10-watt and other low power noncommercial educational FM stations, applications for such new stations, or major changes in existing ones, will not be accepted for filing. Exceptions are: (1) In Alaska, applications for new Class D stations or major changes in existing ones are acceptable for filing; and (2) applications for existing Class D stations to change frequency are acceptable for filing. In (2), upon the grant of such application, the station shall become a Class D (secondary) station. (See First Report and Order, Docket 20735, FCC 78-386, 43 FR 25821, and Second Report and Order, Docket 20735, FCC 78-384, 43 FR 39704.) Effective date of this FCC imposed "freeze" was June 15, 1978. Applications which specify facilities of at least 100 watts effective radiated power will be accepted for filing

Note 3: For rules on processing FM translator and booster stations, see § 74.1233 of this chapter.

III. The following sections are added as amendments to Part 73 of Chapter 1 of Title 47 of the Code of Federal Regulations.

Subpart I - Competitive Bidding Procedures

§ 73.5000 Services subject to competitive bidding.

(a) Mutually exclusive applications for new facilities and for major changes to existing facilities in the following broadcast services are subject to competitive bidding: AM; FM; FM translator; analog television; low power television; and television translator. Mutually exclusive applications for new

facilities and for major changes to existing facilities in the Instructional Television Fixed Service (ITFS) are also subject to competitive bidding. The general competitive bidding procedures found in 47 C.F.R. Part 1, Subpart Q will apply unless otherwise provided in 47 C.F.R. Part 73 and Part 74.

(b) Mutually exclusive applications for broadcast channels in the reserved portion of the FM band (Channels 200-220) and for television broadcast channels reserved for noncommercial educational use are not subject to competitive bidding procedures.

§ 73.5001 Competitive bidding procedures.

(a) Specific competitive bidding procedures for broadcast service and ITFS auctions will be set forth by public notice prior to any auction. The Commission may also design and test alternative procedures, including combinatorial bidding and real time bidding. See 47 C.F.R. §§ 1.2103 and 1.2104.

(b) The Commission may utilize the following competitive bidding mechanisms in broadcast service and ITFS auctions:

(1) *Sequencing.* The Commission will establish and may vary the sequence in which broadcast service construction permits and ITFS licenses will be auctioned

(2) *Grouping.* In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding in broadcast service or ITFS auctions, the Commission will determine which construction permits or licenses will be auctioned simultaneously or in combination.

(3) *Reservation price.* The Commission may establish a reservation price, either disclosed or undisclosed, below which a broadcast construction permit or ITFS license subject to auction will be not awarded.

(4) *Minimum and maximum bid increments.* The Commission may, by announcement before or during broadcast service or ITFS auctions, require minimum bid increments in dollar or percentage terms. The Commission may, by announcement before or during broadcast service or ITFS auctions, establish maximum bid increments in dollar or percentage terms.

(5) *Minimum opening bids.* The Commission may establish a minimum opening bid for each broadcast construction permit or ITFS license subject to auction.

(6) *Stopping rules.* The Commission will establish stopping rules before or during multiple round broadcast service or ITFS auctions in order to terminate the auction within a reasonable time.

(7) *Activity rules.* The Commission will establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted a certain number of waivers of such rule during the auction.

§ 73.5002 Bidding application and certification procedures; prohibition of collusion.

(a) Prior to any broadcast service or ITFS auction, the Commission will issue a public notice announcing the upcoming auction and specifying the period during which all applicants seeking to participate in an auction must file their applications for new broadcast or ITFS facilities or for major changes to existing facilities. Broadcast service or ITFS applications for new facilities or for major modifications will be accepted only during these specified periods. This initial and other public notices will contain information about the completion and submission of applications to participate in the broadcast or ITFS auction, any materials that must accompany the applications, and any filing fee that must accompany the applications or any upfront payments that will need to be submitted. Such public notices will also, in the event mutually exclusive applications are filed for broadcast construction permits or ITFS licenses, contain information about the method of competitive bidding to be used and more detailed instructions on submitting bids and otherwise participating in the auction. In the event applications are submitted that are not mutually exclusive with any other application in the same service, such applications will be identified by public notice and will not be subjected to auction.

(b) To participate in broadcast service or ITFS auctions, all applicants must timely submit short-form applications (FCC Form 175), along with all required certifications, information and exhibits, pursuant to the provisions of 47 C.F.R. § 1.2105(a) and any Commission public notices. So determinations of mutual exclusivity for auction purposes can be made, applicants for non-table broadcast services or for ITFS must also submit the engineering data contained in the appropriate FCC form (FCC Form 301, FCC Form 346, FCC Form 349 or FCC Form 330). Beginning January 1, 1999, all short-form applications must be filed electronically.

(c) Applicants in all broadcast service or ITFS auctions will be subject to the provisions of 47 C.F.R. § 1.2105(b) regarding the modification and dismissal of their short-form applications. Notwithstanding the general applicability of Section 1.2105(b) to broadcast and ITFS auctions, applicants who file mutually exclusive major modification applications, or mutually exclusive major modification and new station applications, will be permitted to make amendments to their engineering submissions following the filing of their short-form applications so as to resolve their mutual exclusivity.

(d) The prohibition of collusion set forth in 47 C.F.R. § 1.2105(c), which becomes effective upon the filing of short-form applications, shall apply to all broadcast service or ITFS auctions. Notwithstanding the general applicability of Section 1.2105(c) to broadcast and ITFS auctions, applicants who file mutually exclusive major modification applications, or mutually exclusive major modifications and new station applications, will be permitted to resolve their mutual exclusivities by means of engineering solutions or settlements during a limited period after the filing of short-form applications. Such period will be further specified by Commission public notices.

§ 73.5003 Submission of upfront payments, down payments and full payments.

(a) To be eligible to bid, each bidder in every broadcast service or ITFS auction shall submit an upfront payment prior to the commencement of bidding, as set forth in any public notices and in accordance with 47 C.F.R. § 1.2106.

(b) Within ten (10) business days following the close of bidding and notification to the winning bidders,